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Nos. 687, 688, 689

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

ILLINOIS CENTRAL RAILROAD COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, MONON RAILROAD,
Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, et al.,
Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

MOTION TO AFFIRM OF APPELLEE MISSOURI PACIFIC RAILROAD COMPANY

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On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

MOTION TO AFFIRM OF APPELLEE MISSOURI PACIFIC RAILROAD COMPANY

Pursuant to Rule 16(1)(c) of the Rules of this Court, appellee Missouri Pacific Railroad Company* moves that the judgment of the District Court be affirmed.

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* Herein referred to as "MoPac." "I.C. brief" refers to the Jurisdictional Statement of the Illinois Central Railroad Com-

Statutes Involved

The pertinent portions of Sections 5(2) and 5(4) of the Interstate Commerce Act (49 U.S.C.) are set out in the Cotton Belt's brief, pages 3 to 4. Section 5(7) of the Act provides in pertinent part:

> "If the Commission finds after such investigation that such person is violating the provisions of such paragraph [subsection 4], it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation."

Statement.

This action was commenced on September 18, 1961, when MoPac filed a petition with the Interstate Commerce Commission for permission to seek financial control of C&EI. Thereafter L&N filed an application for like control of C&EI, which it later replaced with a request that any control order entered by the Commission in favor of either MoPac or any other railroad grant L&N the right to purchase or lease C&EI's Evansville line. Illinois Central, motivated by a desire to keep both MoPac and L&N from gaining direct access to Chicago, rather than by any real

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pany ("Illinois Central"), and "Cotton Belt brief" to that of the St. Louis Southwestern Railway Company. "App." refers to the Appendices to appellants' Jurisdictional Statements. "Tr." refers to the transcript of the hearings before the Examiner, and "St." refers to testimony received in the form of prepared witnesses' statements. "I.C.C." refers to Interstate Commerce Commission. "C&EI" refers to the Chicago & Eastern Illinois Railroad Company; "L&N" refers to the Louisville and Nashville Railroad Company; and "C&NW" refers to the North Western Railway Company.

interest on its part in C&EI,* thereafter filed its own application for financial control of C&EI. Monon, Cotton Belt, C&NW, and several other railroads appeared at various stages of the proceedings in connection with part or all of the case. All of these applications and petitions were consolidated for hearing, together with an investigation by the Commission's Bureau of Inquiry and Compliance of a charge that MoPac and L&N had violated Section 5(4) by purchases of C&EI securities.

After extensive public hearings in Washington, D.C., Chicago and Evansville, Indiana, the Examiner issued a detailed Report finding that MoPac's application for permission to seek financial control of C&EI and to effect an "end to end" coordination with C&EI was clearly in the public interest and should be granted; that Illinois Central's petition was contrary to the public interest and should be denied; that L&N's petition for inclusion as to the Evansville line should be denied; and that neither MoPac nor L&N had violated Section 5(4). Portions of this Report, adopted by the Commission, are set out at App. 99 to 194.

While the case was pending before the full Commission on exceptions to the Examiner's Report,** C&NW moved

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* "An important motive behind the Illinois Central proposal is the desire to deny to both Missouri Pacific and Dixie Line [L&N] an expedient access to the Chicago gateway. If successful, this design would fortify Illinois Central against increased competition from two strong, long-line rivals, as well as permit the elimination of competition from a short-line rival." (Commission's Report, App. 45.)

** The conditions sought by the Cotton Belt were recommended by the Examiner, and it neither filed exceptions to the Report nor participated further in the case during its pendency before the Commission. During the final stages of the review proceed-

to re-open the record in order to submit financial statements of C&EI for the third and fourth quarters of 1963, copies of which were attached to the motion. The motion was denied.

Illinois Central moved to re-open the record with respect to purchases by MoPac of C&EI convertible bonds. MoPac had previously made a full report of each of these purchases to the Commission and the parties, including the fact that contemporaneously with their purchase the bonds had been placed in a voting trust (Appendix B) by direct delivery by the seller to the Marine Midland Trust Company of New York, the trustee of the voting trust. This motion was denied (App. 89).

The Commission adopted most of the reasoning and findings of the Examiner. With respect to whether MoPac control of C&EI would be in the public interest, the Commission said (App. 91-92):

> "Eastern's preservation as a prosperous competitive rail carrier under the control of Missouri Pacific and its corporate parent, Mississippi Fuel, is clearly in the public interest—certainly far more so than would be its eventual subjugation and disintegration under the control of Illinois Central and Illinois Industries, or its continued operation as a self-restricted, financially weak system as at present. Its operation by Dixie Line [L&N] on the eastern branch and Missouri Pacific on the west as herein described would make available to a large number of shippers in the

---

ings before the three-judge court—after MoPac had filed an application with the Commission for control of the Alton & Southern Railway Company, in opposition to Cotton Belt's like application (Cotton Belt Pet. for Leave to Intervene, p. 2)—Cotton Belt entered the case at bar and raised objections to MoPac control of C&EI which it had not theretofor urged.

growing areas of the Southwest and Southeast a new single-line rail service to and from Chicago which many have not had before; and, as previously explained, other carriers in the territory will not be affected to the extent that denial of the Missouri Pacific's application would be warranted on that ground."

The Commission based these conclusions upon a great volume of evidence. The maps reproduced in Appendix A to this brief illustrate, on the one hand, the complementary, non-competitive, end-to-end relationship between MoPac and C&EI at St. Louis, Missouri, and Thebes, Illinois, as well as between the L&N and C&EI at Evansville, Indiana, and on the other hand, the parallel, side-by-side competitive relationship which exists between C&EI and Illinois Central throughout almost all of C&EI's trackage.

C&EI is a short-haul, bridge railroad which has been plagued over the years by inherent financial and competitive weaknesses, most of which will be solved by MoPac control. C&EI facilities will remain intact and be renovated and will become an extention of MoPac lines into Chicago. MoPac will provide C&EI with much needed additional traffic, new equipment and facilities, as well as financial support. (Sts. E; BE, pp. 17-20; U, p. 6; V, p. 5.) It is estimated that after five years under MoPac control, C&EI's net annual operating income will increase by $6,000,000. (App. 127.)

At present, all MoPac traffic to Chicago must be switched to other carriers, usually at the congested St. Louis terminal. A connection between MoPac and C&EI at Thebes, Illinois will establish the first direct, non-stop, single-line service between Chicago and many parts of the vast Southwest. Substantial reductions in shipping costs will be achieved. Freight schedules will be improved as much as 30 hours. (St. B; St. C, pp. 7-14.) Numerous shippers,

receivers and public witnesses testified to the need for this improved service. (See, for example, Sts. J, M, S. T. U, V, W, X, Y, Z, AA, AD, AG, AS; Tr. 1822-27, 1863-66, 1875-78, 1915-21, 1932-35, 2021-23, 2143-46, 2654-57, 2697-2700, 3276-3313.)

Contrary to labor's usual reaction to control applications, representatives of the unions for both MoPac and C&EI employees testified in support of MoPac's control, in anticipation of the additional traffic for both carriers and the additional jobs which will result. (Tr. 219, 233-34.)

For a more complete discussion of the evidence of the benefits which will result from the Commission's order we respectfully refer the Court to pages 41 to 49, 91 to 92, and 183 to 189 of appellant's Appendices.

The Commission disagreed with the Examiner's findings and recommendations in only two respects of any consequence, namely: (1) The Commission held that when MoPac acquires control of C&EI, it must negotiate with L&N for sale or lease of the Evansville line. (App. 54 to 69.) (2) The Commission found that for an 8-month period during 1961 and 1962 MoPac had been in violation of Section 5(4) in that it owned approximately 30% of the C&EI Class A stock, which gave MoPac a potential power to veto certain extraordinary corporate transactions such as mergers or sales of all assets. The Commission found, however, that this temporary violation was mitigated in that MoPac had made no effort to control C&EI or to elect members of C&EI's board, and was ended when MoPac placed the stock in a voting trust, with a competent, independent trustee, the Marine Midland Trust Company of New York. (App. 82 to 90.) The Commission concluded (App. 90):

> "In our opinion, the public interest considerations in these proceedings overwhelmingly favor approval of Missouri Pacific's control of Eastern subject to conditions for inclusion of [L&N] notwithstanding the section 5(4) violation."

The Illinois Central and the Monon thereupon filed this action in the District Court to enjoin the Commission's order. Long after the case was at issue and the parties had filed briefs on the merits, and shortly before the three-judge court was to hear oral arguments and take the case under advisement (May 9, 1966), Cotton Belt sought and was granted leave to intervene as a plaintiff. Shortly prior thereto MoPac had filed an application with the Commission for control of Alton & Southern Railway Company, in opposition to Cotton Belt's like application. (Cotton Belt Pet. for Leave to Intervene, p. 2.)

On May 4, 1966 (five days before the three judge District Court took this case under advisement), Cotton Belt presented to the Commission a petition to re-open proof and for further hearings, in which it relied primarily upon the claim that the financial condition of C&EI had improved. The Commission denied the motion on June 29, 1966 because (*inter alia*) "the alleged recent short-term improvement in the financial condition of [C&EI] is insufficient to warrant reconsideration of the Commission's conclusion, based on the long-term history of the carrier, that its affiliation with a stronger railroad will be consistent with the public interest." The full order of the Commission is set forth in Appendix C to this brief.

A majority of the three-judge District Court affirmed the order of the Commission. (App. 1 to 34.) The Court held that the evidence supported the Commission's findings

that MoPac control of C&EI was in the public interest, and that the Commission was justified in finding that the public interest in MoPac control outweighed its temporary violation of Section 5(4). (App. 5 to 16.) The Court sustained the Commission's refusal to re-open proof with regard to MoPac's purchase of C&EI bonds in 1964 (App. 16 to 21), and with regard to C&EI's financial condition. (App. 22 to 24.) The Court also upheld the Commission's conditions in favor of L&N regarding the Evansville line. (App. 24 to 27.)

THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL.

I.

Appellants Do Not Challenge The Commission's Finding That MoPac Control of C&EI Is Consistent With the Public Interest.

The ultimate question which the Commission was required to determine was whether the proposed control of C&EI by MoPac is "consistent with the public interest." (49 U.S.C. § 5(2) (b).)

The uncontradicted evidence supports the Commission's findings that MoPac control of C&EI will materially improve the efficiency of the national transportation system, particularly with respect to freight moving between Chicago and the Southwest, and will at the same time remedy C&EI's inherent financial and competitive defects. Appellants do not challenge these findings in this Court, and, in fact, did not seriously challenge them below.

Rather than attacking the Commission's findings as to public interest, appellants turn to purely collateral issues which involve solely the exercise of discretion by the Commission in weighing competing public interest considerations. Appellants dwell upon Section 5(4) of the Interstate Commerce Act, which prohibits a carrier's acquisition of control of another carrier without prior Commission approval. Appellants seek to posture this case as one involving far-reaching considerations of the meaning and effect of Section 5(4). In reality, no novel or im-

portant question is involved. The Commission, properly weighing the competing public interest considerations, resolved the Section 5(4) issue in accordance with the recent holdings of this Court in *Gilbertville Trucking Co.* v. *United States,* 371 U.S. 115 (1962), and *Alamo Express, Inc.* v. *United States,* 382 U.S. 19 (1965), summarily affirming without opinion, 239 F.Supp. 694 (W.D. Tex. 1965).

Since "there is warrant in the law and the facts for what the Commission has done" (*United States* v. *Pierce Auto Freight Lines, Inc.,* 327 U.S. 515, 536 (1946)), the judgment below should be summarily affirmed, thus permitting the affiliation of C&EI and MoPac to proceed without further delay.

Appellants' opposition to MoPac control of C&EI, while perhaps understandable, is far from commendable when viewed in light of the public interest. Illinois Central's objections are motivated, as the Commission found, by "the desire to deny to both Missouri Pacific and [L&N] an expedient access to the Chicago gateway . . . [in order to] fortify Illinois Central against increased competition from two strong, long-line rivals, as well as permit the elimination of competition from a short-line rival [C&EI]." (App. 45.) As for Cotton Belt, it retired from this case in 1963, satisfied with the Hearing Examiner's Report, and did not return until this year, when the case in the District Court was nearly concluded, and then only after MoPac had refused to withdraw its opposition to Cotton Belt's application for control of the Alton and Southern Railway. (Cotton Belt Pet. for Leave to Intervene, p. 2; MoPac Response to Pet. for Leave to Intervene, pp. 3-4.)

II.

In Accordance With the Rulings of This Court In the Gilbertville and Alamo Cases, the Commission and the District Court Correctly Held That the Commission Must Determine Whether the Public Interest In MoPac Control of C&EI Outweighs MoPac's Violation of Section 5(4).

[Answer to I.C. brief, Part I, pp. 13-18, and C.B. brief, Part III, pp. 16-17.]

Illinois Central and Cotton Belt assert that the Commission erred when it stated, "even though we find a statutory violation through the unlawful acquisition of control, we are not free to summarily deny Missouri Pacific's application." (App. 89.)

The Commission's holding correctly states the law. In *Gilbertville Trucking Co.* v. *United States,* 371 U.S. 115, 129 (1962), this Court said that the rule embodied in Section 5(4) ". . . is not automatic and will give way to a clear showing of public interest in approval." This Court cited with approval the Commission's leading decision on this question, *Central of Georgia*, 307 I.C.C. 39, 43 (1958), in which the Commission held that a violation of Section 5(4) "is not necessarily a bar to approval of an application under section 5(2), if, upon consideration of all the facts, it clearly appears that the public interest will be served best by such approval." (371 U.S. at 128.)

In *Gilbertville*, this Court held that the Commission has a duty to weigh all competing public interest considerations, including any violations of Section 5(4), and that the Commission may grant permission to control to a carrier despite its breach of Section 5(4) if the Commission

concludes on all the facts before it that to do so would best serve the public interest (371 U.S. at 129-130):

> "... as §5(7) itself implies, the Commission's power is corrective, not punitive. The justification for the remedy [of divestiture] is the removal of violation.
>
> "... the choice of remedy is as important a decision as the initial construction of the statute and finding of a violation. The court or agency charged with this choice has a heavy responsibility to tailor the remedy to the particular facts of each case so as to best effectuate the remedial objectives just described."

Unless the Commission has the right to excuse violations of Section 5(4) where the proposed control, all things considered, will best serve the public interest, it will be prevented from carrying out the very purpose for which it was formed—the protection of the public.

The very same issue came before this Court last year in *Alamo Express, Inc.* v. *United States,* 382 U.S. 19 (1965), affirming 239 F.Supp. 694 (W.D. Tex. 1965). The brief filed in the case at bar by appellee Leighton contains the pertinent quotations from the briefs filed in the *Alamo* case, which show that the appellants in that case raised the same issue raised by appellants here. Following the precedent set in *Gilbertville,* this Court in *Alamo* summarily granted motions to affirm.

The issue tendered by appellants does not call for plenary consideration by this Court.

III.

The Commission Did Not Abuse Its Discretion. The Commission and the District Court Correctly Held That the Benefit to Shippers, Receivers and the Public Which Will Result From MoPac Control of C&EI Outweighs Any Possible Adverse Effects Upon the Prerogatives of the Commission Occasioned by MoPac's Brief Violation of Section 5(4).

[Answer to I.C. brief, Parts II, III and IV, pp. 18-29, and C.B. brief, Parts I and II, pp. 11-16.]

Appellants argue that even if the Commission has power to excuse a Section 5(4) violation, it abused its discretion in this case because (1) MoPac's purchase of C&EI securities was intended to discourage other carriers from interest in C&EI, and (2) MoPac's power to control C&EI did not cease when MoPac placed its C&EI securities in trust.

A.

THE COMMISSION FULLY CONSIDERED MoPAC'S TEMPORARY VIOLATION OF SECTION 5(4), AND CORRECTLY HELD THAT THE PUBLIC BENEFIT THAT WILL FLOW FROM MoPAC'S CONTROL OF C&EI MATERIALLY OUTWEIGHS WHATEVER PUBLIC BENEFIT MIGHT ACCRUE FROM HEAVY HANDED APPLICATION OF SECTION 5(4).

MoPac's outright ownership of approximately 30% of the C.&E.I. Class A stock was deemed by the Commission to be a violation of Section 5(4), because the consent of two-thirds of the holders of Class A stock is required to approve certain extraordinary corporate actions such as merger, sale of all assets, and the like. However, the Commission concluded that the nature, character, extent of and circumstances surrounding the violation were not so compelling as to outweigh the strong public interest that will be served by granting MoPac the right to acquire financial

control of C.&E.I. Among the facts which support the Commission's conclusion are:

— MoPac had but a limited veto power. This kind of negative power had never before been held to constitute a violation of Section 5(4), and indeed the Hearing Examiner held that it did not. (MoPac does not here challenge the Commission's contrary ruling.)

— MoPac disclosed to the Commission its purchase of the C&EI Class A stock (August 3, 1961) in the application it filed soon thereafter (September 18, 1961) for control of C&EI.

— When a question was raised as to the legality of MoPac's outright ownership of the Class A stock (and less than 9 months after the purchase) MoPac executed a voting trust agreement with the Marine Midland Trust Company of New York (April 20, 1962), and placed the stock into the trust, which effectively divorced MoPac from voting control of the C&EI stock.

— The voting trust agreement was fashioned after others previously approved by the Commission, and was designed to vest full control over the stock in the trustee.

— The Commission found that the Marine Midland Trust Company is "reputable, competent, experienced, and fully qualified," that it has "long been recognized as outstanding in [its] field," that it has no relation with MoPac other than this trust agreement, and that it has acted as trustee "independently and impartially, free from any participation, suggestion, or control" of MoPac. (App. 88.)

In light of these facts, the Commission was well within its discretion in finding that the "overwhelming" public interest favoring MoPac control of C&EI outweighed

MoPac's brief and inadvertent violation of Section 5(4). (App. 91.)

Since it is the Commission's prerogatives which are involved when Section 5(4) is breached, and since the Commission is in the best position to fashion the appropriate relief pursuant to Section 5(7), the three judge District Court correctly declined to interfere with the Commission's resolution of this issue. (App. 16.)

Appellants misstate the record when they argue that MoPac bought the Class A stock for the purpose of blocking mergers between C&EI and other railroads. MoPac acquired the Class A stock as a part of a block of four types of C&EI securities which had been placed on the market by a decedent's administrator, as a prelude to its application for control of C&EI. (Jencks, St. A., pp. 8-10; Tr. 149-51, 169-70.)

Neither does the record support appellants' assertion that MoPac's purchase in fact deterred other railroads from seeking to acquire an interest in or control of C&EI. Illinois Central has persistently pursued its application for control of C&EI. L&N withdrew from merger discussions with C&EI only because L&N management concluded that it was interested in acquiring only the Evansville portion of the C&EI lines. (Kendall, Tr. 3012.) There is no evidence that any other railroad was seriously contemplating merger with C&EI.

Appellants claim that the Commission overlooked the veto power over mergers held by owners of the Class A stock. On the contrary, the Commission carefully analyzed all of the powers of the Class A stock (App. 83-85). It was the existence of these "elements of control" (App. 84) which led the Commission to find that MoPac had acquired

a negative power to control C&EI and thus had violated Section 5(4). The Commission properly decided that under all the facts presented, including the weighing of the strong public interest in MoPac control of C&EI against the nature of MoPac's conduct, the temporary and limited violation by MoPac of Section 5(4) did not require or justify denial of MoPac's application for control of C&EI.

This judgment was well within the Commission's discretion.

B.

THE MARINE MIDLAND VOTING TRUST REMOVED ANY POWER MoPAC MAY HAVE HAD TO CONTROL C&EI.

The three judge District Court and the Commission correctly held that, as a practical matter, the voting trust established by MoPac completely insulated MoPac from power to control C&EI. The voting trust was patterned after agreements which the Commission had prescribed in other cases as sufficient to end Section 5(4) violations. (App. 86-87). The very purpose of the trust was, as the voting trust instrument recited, ". . . that MoPac shall not be enabled, until such time as control by it of C&EI may be authorized in accordance with applicable provisions of law, to exercise any voting rights incident to any stock of C&EI now owned or hereafter acquired by it. . . ." (See Appendix B to this brief, p. App. 6.) Under the terms of the voting trust, the trustee may not assent to and must conduct itself so as to serve as a barrier against control of C&EI by MoPac, absent prior Commission approval. The trustee has in fact acted independently of MoPac. (App. 88.) The trust is irrevocable for 10 years, unless MoPac's application for control of C&EI is approved by the Commission or the securities are sold. The Commission is given the power to prevent any amendment to the instrument which does not meet with its approval.

Under these circumstances, the Commission and the District Court acted well within the permissible range of discretion in holding that the voting trust cured MoPac's violation of Section 5(4) by removing any power it had to control C&EI through stock ownership.

Appellants argue that the Commission found the voting trust to be irrevocable, and relied on this finding in ruling in MoPac's favor on the Section 5(4) issues. They argue that this was error because, under general principles of trust law, the settlor-beneficiary of a trust may revoke at will.

Appellants' statements of general trust law have no application here. Under applicable statutes and case law, the MoPac-Marine Midland voting trust is irrevocable.*

---

* Appellants' theoretical revocability argument is unsound in law, let alone impractical. Both New York (where the trustee and the securities are located) and Indiana (the state of incorporation of C&EI) have statutes which expressly provide for 10-year irrevocable voting trusts. *New York Stock Corporation Law* §50; *In re Morse,* 247 N.Y. 290, 160 N.E. 374, 376 (1928); and Ind. Stat. Ann. §§ 25-255 *et. seq.* Moreover, the settlor-beneficiary of a commercial trust may not revoke without the consent of those who have an interest in having the purpose of the trust fulfilled. *Hearst* v. *American Newspapers, Inc.,* 51 F.Supp. 171, 178 (D. Del. 1943). Furthermore, since MoPac represented to the Commission that the voting trust is irrevocable, it is estopped to attempt to revoke. *Casey* v. *Galli,* 94 U.S. 673, 680 (1876); *Dickerson* v. *Colgrove,* 100 U.S. 578-580 (1879).

Section 23 of the New York Personal Property Law, upon which appellants rely, does not apply if the trust instrument reserves the power to revoke only under stated conditions. *In re Mordecai's Trust,* 24 Misc. 2d 668, 201 N.Y.S.2d 899, aff'd. 12 App. Div. 2d 449, 210 N.Y.S.2d 478 (1960). Even under Section 23, the trustee as well as the settlor-beneficiary must agree to revocation. *Tompers* v. *Bank of America,* 217 App. Div. 691, 217 N.Y.S. 67, 74-75 (1926).

Irrespective of this however, as the District Court held, the theoretical revocability or non-revocability of the voting trust is immaterial. The crucial fact is that, as a practical matter, the voting trust agreement actually insulates MoPac from control of C&EI. Moreover, as a practical matter MoPac would not revoke the trust, even if it could. If the trust were revoked without Commission approval, the Commission could and would undoubtedly immediately vacate its order granting MoPac authority to gain control of C&EI and order it to divest itself of its C&EI stock. The District Court described the realities involved here when it said (App. 12-13):

> "We think the Commission correctly approved this trust, regardless of the technical rules of the laws of trusts.
>
> • • •
>
> "A MoPac revocation would endanger the very goal MoPac seeks: control of Eastern. It is beyond reasonable comprehension to suppose that MoPac would revoke this trust prior to gaining Commission approval.
>
> • • •
>
> "For the purposes of § 5(4), this practical barrier to revocation is sufficient. It amounts to irrevocability. . . ."

The Commission is and must be concerned with practicalities in exercising the discretion granted to it under Section 5(7). The Commission will not approve a sham disposition of power, but neither will it reject a true, good faith disposition of power such as occurred here, merely because of some purported legal technicality.

The District Court was correct in upholding the Commission's finding that MoPac's violation of Section 5(4) was terminated by the voting trust.

IV.

The District Court Correctly Held That The Commission Acted Within Its Discretion In Denying The Petitions To Re-Open Proofs.

[Answer to I.C. brief, Part V, pp. 29-34, and C.B. brief, Parts IV and V, pp. 17-21.]

A.

THE COMMISSSION'S REFUSAL TO RE-OPEN PROOFS TO HEAR FURTHER EVIDENCE REGARDING MoPAC SECURITIES PURCHASES RAISES NO SUBSTANTIAL QUESTION.

Almost a full year after the Hearing Examiner had filed his Report, Illinois Central filed a motion before the full Commission to re-open the proof, alleging that MoPac had, some six months earlier, purchased C&EI bonds through exercise of options theretofore entered into with Dempsey-Tegler, Inc. and Eastman-Dillion Union Securities Company, and that these purchases constituted a violation of Section 5(4). However, Illinois Central ignored the controlling fact that contemporaneously with their purchase those securities were immediately and directly deposited in the Marine Midland voting trust. MoPac never had possession or control of them. Moreover, MoPac immediately reported the purchases to the Commission and all parties. (Reply of MoPac to I.C. Petition to Reopen, dated Aug. 31, 1964.)

Thus, the evidence which Illinois Central sought to introduce by its petition to re-open was already in the record before the Commission.

The District Court upheld the Commission's finding that the acquisition of the options to purchase and their subsequent exercise did not constitute a further violation of

Section 5(4) nor warrant re-opening of the proof. (App. 21.) The District Court and the Commission recognized that even if the signing of the option agreements were treated as equivalent to MoPac's having acquired a right to obtain immediate access to the bonds through exercise of the options, there were conditions precedent to MoPac's translating this right into actual voting power in C&EI. The options would have given MoPac access to voting stock in C&EI only if MoPac (1) purchased the bonds, (2) converted them to common stock, and (3) retained that stock rather than transferring it to the voting trust.

When MoPac actually exercised the options, the bonds were deposited contemporaneously and directly into the voting trust. The Commission correctly held that this created a genuine and effective insulation against MoPac's control of those securities.

The Commission's discretion in considering a motion to re-open is extremely broad, and will be disturbed only upon "a showing of the clearest abuse of discretion. . ." *United States* v. *Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 535 (1946). The Commission's discretionary refusal to re-open the record to hear evidence which was already before it, and which was, in any event, of little significance under the facts of this case, does not warrant plenary review in this Court.

B.

THE COMMISSION'S REFUSAL TO RE-OPEN PROOFS REGARDING C&EI'S FINANCIAL CONDITION PRESENTS NO SUBSTANTIAL QUESTION.

In his Report filed in September, 1963, the Hearing Examiner found that C&EI suffered from chronic, fundamental, financial problems which could not be rectified by

momentary upswings in current income. The Examiner included in his findings on financial conditions express references to the probability of future superficial improvements in C&EI's current net earnings due to favorable economic conditions, but emphasized that C&EI's major problems are inherent and subject to solution only by alliance with a strong, long-haul carrier. (App. 104-109, 118-119, 180-188.)

There was no dispute about these facts at the hearings before the Examiner. Illinois Central itself emphasized C&EI's inherent defects. (I.C. Application For Control, Amendment, p. 2) Furthermore, Mr. Mathews, President of C&EI, clearly testified that C&EI's condition was the result of fundamental, built-in defects. (St., BE, pp. 17-20.) Thus, the Examiner said (App. 109):

> ". . . A reasonable appraisal supports the assertions of virtually every party to these proceedings, that Eastern presently is in a precarious financial position, and that unless means are found to reverse the trend, it may face another reorganization."

Shortly after the Examiner's Report was filed, and while the case was pending before the Commission, C&NW (*not* appellants) moved to re-open the proof in order to permit it to present C&EI financial statements for the last two quarters of fiscal 1963 which showed a slight improvement in C&EI's operating figures. Copies of these financial statements were attached to the motion.

Since the Examiner and the Commission had already studied the entire financial history of C&EI, including financial statements for the first two quarters of 1963 it is hardly surprising that the Commission concluded that

"a further hearing for the purpose stated [to show improvements in current net earnings] is not warranted." (Order, January 19, 1964.)

In its Report, subsequently filed, the Commission described C&EI as "a relatively small, financially weak, and physically deficient railroad lacking the reserve and source of ready assistance needed to successfully compete with the relatively large, well-equipped, vigorous, long-line railroads operating in the same territory, and with the increasingly dynamic carriers of the other modes of transportation." (App. 22.) The Commission reiterated this finding in its order of June 29, 1966 denying Cotton Belt's belated petition to re-open (App. C.) These decisions were within the ambit of the Commission's discretion, and do not deserve the attention of this Court. The three judge District Court affirmed the Commission's rulings. (App. 23-24.)

Moreover, C&EI, recognizing the need for and desirability of MoPac control, has filed a motion in this cause asking this Court to affirm.

V.

The Commission Properly Granted L&N the Right To Negotiate For Purchase Or Lease Of the Evansville Line.

With regard to L&N's negotiations for purchase or lease of C&EI's Evansville line, and the arguments of Monon with respect thereto, MoPac adopts the views contained in the Commission's motion to dismiss.

CONCLUSION.

For the foregoing reasons, appellee Missouri Pacific Railroad Company respectfully submits that the questions presented by appellants in these cases are not substantial and that the judgment of the court below should be summarily affirmed.

Respectfully submitted,

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Chicago, Illinois 60603

November 29, 1966.

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APPENDIX

F.D. 21892
EXHIBIT No. 14-51
WITNESS; H.S. POWELL
SOUTH DAKOTA
MINNESOTA
WISCONSIN
MICHIGAN
WYOMING
NEBRASKA
IOWA
ILLINOIS
INDIANA
OHIO
COLORADO
KANSAS
MISSOURI
KENTUCKY
W. VA.
VA.
OKLAHOMA
TENNESSEE
N. C.
S. C.
NEW MEXICO
ARKANSAS
MISSISSIPPI
ALABAMA
GEORGIA
TEXAS
LOUISIANA
FLORIDA
SIOUX FALLS
ALBERT LEA
MADISON
SIOUX CITY
ST. DODGE
WATERLOO
DUBUQUE
FREEPORT
CHICAGO
OMAHA
LINCOLN
PEORIA
SPRINGFIELD
TERRE HAUTE
INDIANAPOLIS
CINCINNATI
KANSAS CITY
ST. LOUIS
EVANSVILLE
LOUISVILLE
PUEBLO
WICHITA
COFFEYVILLE
POPLAR BLUFF
BOWLING GREEN
CORBIN
KNOXVILLE
NASHVILLE
CHATTANOOGA
FORT SMITH
MEMPHIS
JACKSON
LITTLE ROCK
ATLANTA
BIRMINGHAM
ABERDEEN
GRENADA
TEXARKANA
FORT WORTH
DALLAS
SHREVEPORT
MONTGOMERY
SELMA
EL PASO
PALESTINE
MERIDIAN
HATTIESBURG
MOBILE
CHATTAHOOCHIE
BATON ROUGE
LAKE CHARLES
PENSACOLA
HOUSTON
GALVESTON
SAN ANTONIO
LAREDO
CORPUS CHRISTI
BROWNSVILLE
LEGEND
ILLINOIS CENTRAL R. R.
CHICAGO & EASTERN ILLINOIS R. R.
LOUISVILLE & NASHVILLE R. R.
MISSOURI PACIFIC R. R.
(INCLUDING TEXAS AND PACIFIC RY.)

APPENDIX A

App. 1

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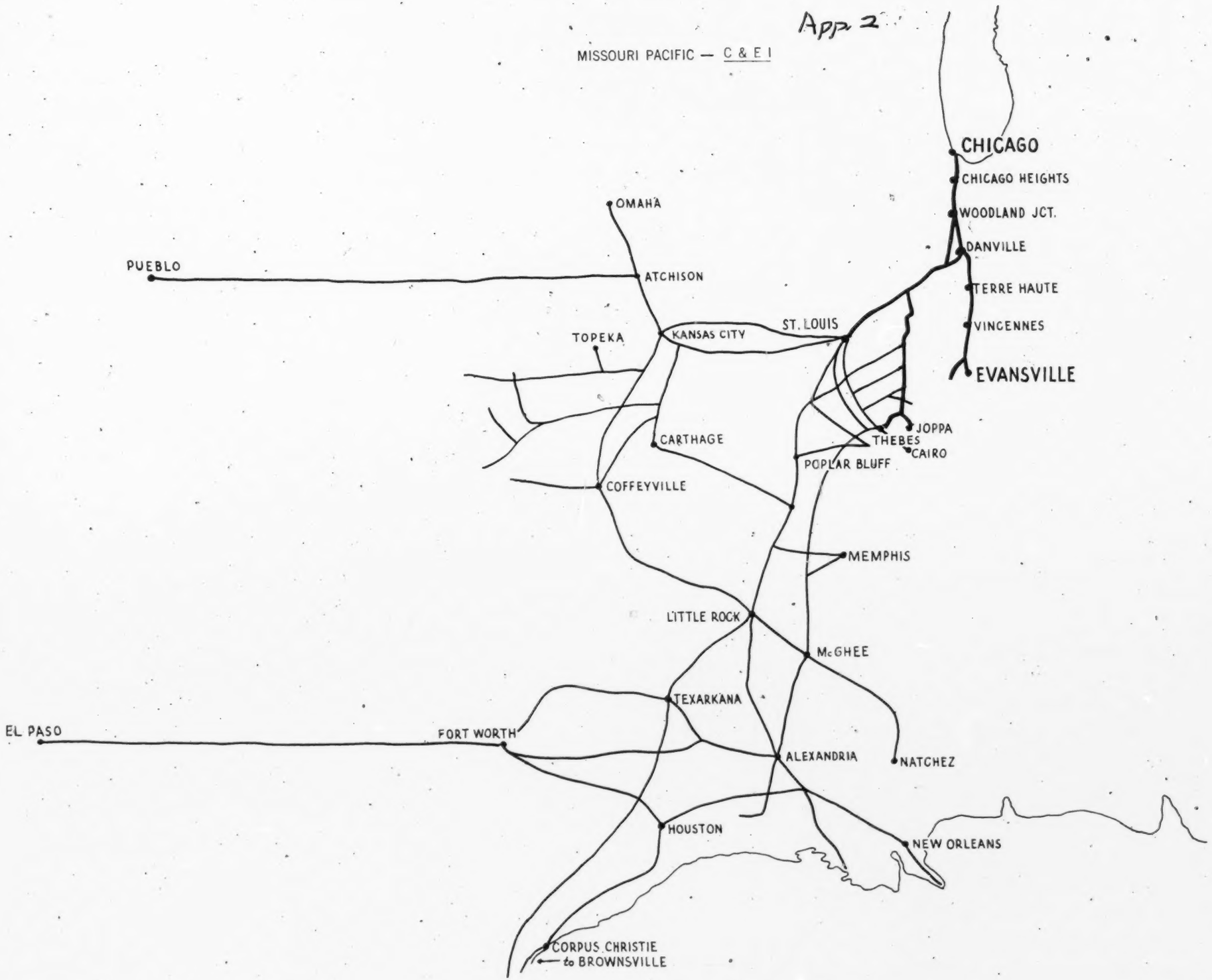
App 2

MISSOURI PACIFIC — C & E I



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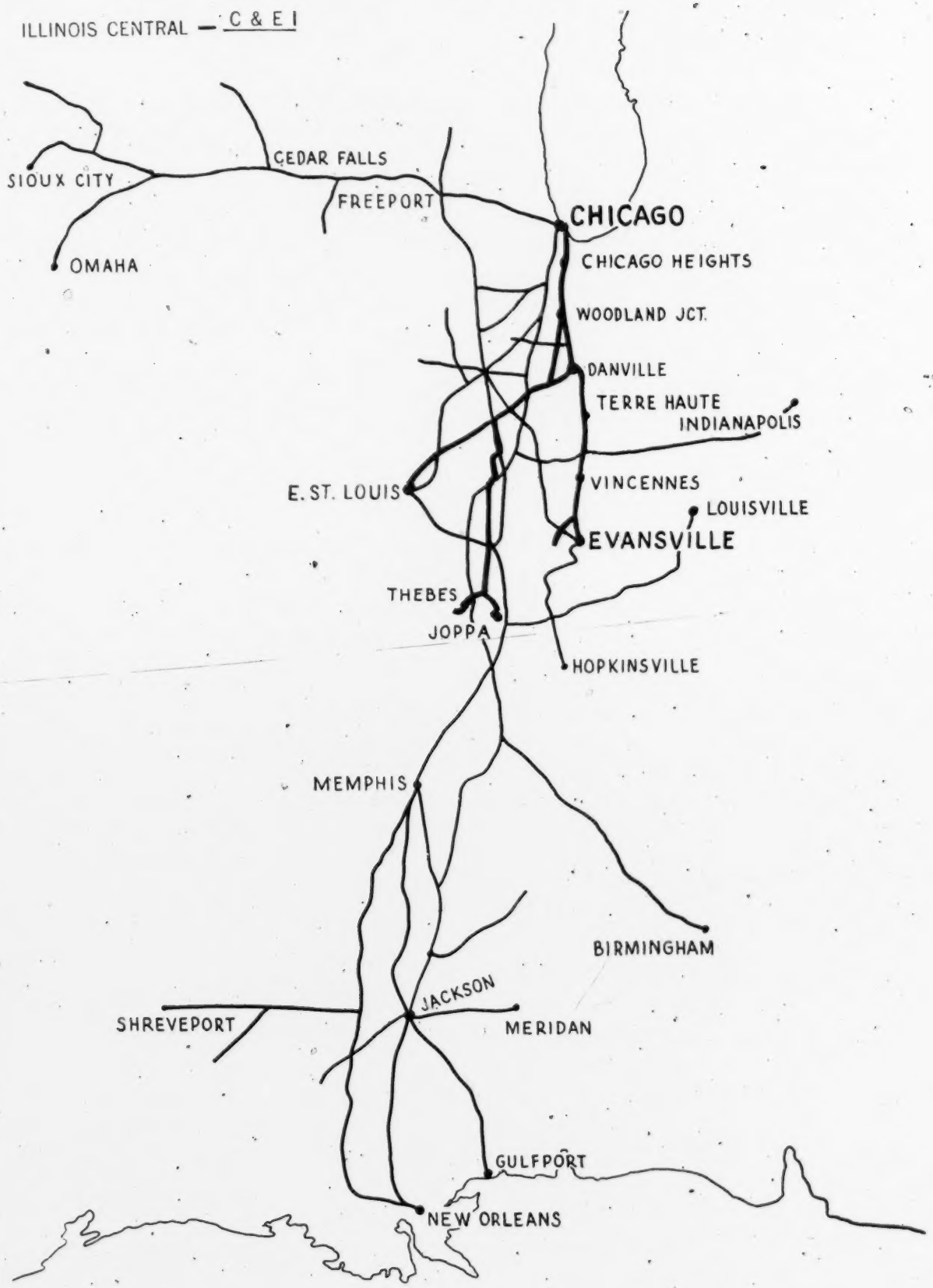
ILLINOIS CENTRAL — C & E I
SIOUX CITY
CEDAR FALLS
FREEPORT
OMAHA
CHICAGO
CHICAGO HEIGHTS
WOODLAND JCT.
DANVILLE
TERRE HAUTE
INDIANAPOLIS
E. ST. LOUIS
VINCENNES
LOUISVILLE
EVANSVILLE
THEBES
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APPENDIX B

INDEPENDENT VOTING TRUST AGREEMENT

THIS TRUST AGREEMENT, dated as of this 20th day of April, 1962, by and between MISSOURI PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Missouri, and having its principal office at 210 North 13th Street, St. Louis 3, Missouri, (hereinafter called MoPac), and THE MARINE MIDLAND TRUST COMPANY OF NEW YORK, a banking institution organized and existing under the laws of the State of New York, and having its principal office at 120 Broadway, New York 15, New York (hereinafter called the Trustee).

WITNESSETH:

WHEREAS, MoPac has purchased and owns shares of the capital stock of Chicago & Eastern Illinois Railroad Company, an Indiana corporation (hereinafter called C&EI), such shares including shares of the Class A stock and of the common stock of the C&EI; and,

WHEREAS, MoPac may from time to time purchase, cause to be purchased, or acquire by distribution from the Company, exchange, conversion of bonds or otherwise, additional shares of C&EI; and,

WHEREAS, MoPac by such purchases of C&EI stock did not desire to acquire control or purported control of C&EI, and does not now desire to acquire such control unless and until authority to do so is granted by the Interstate Commerce Commission; and,

WHEREAS, MoPac, without admitting that its purchases and ownership of shares of the capital stock of C&EI constitute control of, or power to control, said Company, wishes to avoid any questions or charges that have

or may arise by reason of its ownership of such C&EI stocks; and to that end desires to place in trust any shares of capital stock issued by C&EI and purchased or otherwise acquired by MoPac, so that MoPac shall not be enabled, until such time as control by it of C&EI may be authorized in accordance with applicable provisions of law, to exercise any voting rights incident to any stocks of C&EI now owned or hereafter acquired by it; and,

WHEREAS, the Trustee is willing to accept a trust with respect to such shares of capital stock of C&EI as MoPac now owns, or such securities of C&EI as it may hereafter purchase or otherwise acquire.

NOW, THEREFORE, the parties hereto, in consideration of the premises and of the agreements between the parties hereto, as hereinafter contained, agree:

(1) For the purpose of vesting in the Trustee the right to vote and take other action with respect to such securities for the period and upon the terms and conditions set forth in this agreement MoPac hereby assigns, transfers and delivers to the Trustee all of its shares of voting stock of the Chicago & Eastern Illinois Railroad Company, namely, 23,600 shares of Class A stock and 74,104 shares of common stock.

Following execution of this Trust Agreement, MoPac, from time to time, (a) will cause to be transferred to the Trustee or its nominee, to be held in trust according to the terms and provisions of this Trust Agreement, any additional shares of stock issued by C&EI, including but not limited to shares of the Class A stock and of the common stock, acquired by it by purchase, distribution from the Company, exchange, conversion of any bonds of C&EI or otherwise, and (b) may deposit sums of money with the Trustee to be held by the Trustee and used for the purchase by the Trustee of additional securities of any class or type

of the said C&EI in accordance with the written direction of MoPac, such additional securities so purchased to be held in trust by the Trustee subject to the same terms and conditions as shares of stock initially deposited under this agreement, it being understood that any money so deposited and not used for the purchase of C&EI securities shall be returned to MoPac at any time upon its written request. The word "securities" as used from time to time in this agreement shall include not only the common and Class A stock initially deposited hereunder, but also any Class A or common stock, bonds or debentures issued by C&EI and deposited hereafter.

(2) Certificates for C&EI securities deposited hereunder shall be delivered to the Trustee fully endorsed for transfer, or registered in the name of the Trustee or of its nominee, with all applicable transfer taxes and fees having been paid. If and when the Trustee shall be requested or ordered to cause any securities held in this trust to be transferred or delivered for transfer, MoPac will, upon request of the Trustee, provide the Trustee with the funds required for the payment of any transfer tax and any transfer fees.

(3) The Trustee may, and shall upon the request of MoPac, issue and deliver to MoPac a certificate or certificates (hereinafter called Trust Certificates) evidencing the beneficial interest of MoPac in and to all of the securities of C&EI which are or may become subject to the provisions of this Trust Agreement, provided, that the Trustee shall not be obligated to issue any such certificate or certificates unless and until it is satisfied that the requirements of all laws applicable to the issuance and delivery thereof have been complied with at the expense of MoPac.

(4) The Trustee shall be entitled and it shall be its duty either in person or by proxy, with full power of substitu-

tion, to vote or cause to be voted, or to assent, or decline to assent, in respect of, securities of C&EI deposited hereunder of which it shall have become record holder prior to any applicable record date unless otherwise directed by a court of competent jurisdiction; provided however that the Trustee shall not vote or assent in respect of any such securities for the acquisition of control of C&EI by MoPac or by any other company except as may be permitted or authorized by the Interstate Commerce Commission or required by a court of competent jurisdiction.

The Trustee will exercise the voting power of C&EI securities and will exercise its best judgment from time to time in voting for the election of suitable directors to the end that the affairs of C&EI shall be properly managed, and in voting and in acting on other matters which may come before it as stockholder or bondholder or at any meeting of the stockholders or bondholders will exercise like judgment.

The Trustee shall vote the securities of C&EI so that at all times during the continuance of this Trust Agreement there shall, to the best of its knowledge, be entire independence of directors and management between MoPac and C&EI, and the Trustee shall not exercise the voting power of said securities of C&EI in such way as to its knowledge cause any dependence or intercorporate relationship between said two companies; and particularly it shall not, without the consent of the Interstate Commerce Commission, to its knowledge vote so that any officer or director of MoPac, or any corporation controlled by MoPac, shall be elected an officer or director of C&EI or its controlled subsidiaries; provided, however, that this paragraph is not intended, nor shall it be construed to prevent the Trustee from voting said shares of capital stock when necessary for the approval of such operating, engineering, traffic arrangements or other agreements as are customary and

desirable between railroads, nor of such trackage or other contracts as may be agreed upon between the MoPac, or its controlled subsidiaries, and the C&EI or its controlled subsidiaries, if such arrangements, agreements, or contracts may not, so far as the Trustee knows, substantially lessen competition or may not, so far as the Trustee knows, restrain commerce.

(5) In the event that MoPac shall pledge any certificates evidencing MoPac's beneficial interest in securities deposited under this Trust Agreement to anyone other than an affiliate of MoPac, (ascribing to the term "affiliate" the meaning specified in Section 5(6) of the Interstate Commerce Act), and the terms of such pledge shall entitle the pledgee to vote and give consent with respect to the securities represented by the pledged Trust Certificates if any stated event of default shall occur, then upon the occurrence and during the continuance of any such event of default, the Trustee, upon being satisfied of the occurrence and continuance of such event of default, shall vote the securities represented by such Trust Certificates, or otherwise act in respect thereof, in accordance with the written directions of the pledgee, the terms of paragraph (4) hereof to the contrary notwithstanding; provided, however, that the Trustee shall not accept any instruction of a pledgee if, to Trustee's knowledge, for such pledgee to vote would constitute a violation of Section 5 of the Interstate Commerce Act. The Trustee shall be entitled to act and rely upon a certificate of MoPac that MoPac has pledged Trust Certificates in the manner and upon the terms hereinabove described, naming the pledgee and specifying the number (or face amount in the case of bonds) and class of securities represented by the pledged Trust Certificates, and the Trustee shall be entitled to act and rely upon the certificate of the pledgee named therein (signed, in the case of individual pledgee or pledgees by

the pledgee or pledgees named, and in the case of a corporate pledgee, by the President or any Vice President and by the Secretary or Assistant Secretary thereof) that the event of default entitling the pledgee to vote and give consents with respect to the securities represented by the pledged Trust Certificates has occurred and is continuing.

(6) Pending the termination of this trust as hereinafter provided the Trustee shall be entitled to receive all cash dividends that may be declared and paid upon any of the aforesaid shares of capital stock of C&EI and shall immediately pay the same to MoPac; and in like manner the Trustee shall receive and pay to MoPac any interest paid upon any bonds or debentures that may at any time be deposited with it. All dividends which may be declared and be payable in securities of the C&EI shall be received and held by the Trustee upon the same terms and conditions as is the right, title and interest of MoPac in the aforesaid shares of stock of C&EI deposited in this trust, and subject to all the terms, conditions and agreements as herein provided with respect to the aforesaid shares. In like manner, as to any securities of C&EI deposited in trust with the Trustee, if such securities, or any of them, are converted or exchanged into shares of stock or other securities of C&EI in accordance with any conversion or exchange privilege, the resulting shares of stock or other securities shall be held subject to all the terms, conditions, and agreements as herein provided.

(7) The Trustee shall be entitled to reasonable compensation for all services rendered by it as Trustee under the terms hereof, and said compensation to the Trustee, together with such counsel fees, taxes, or other expenses reasonably incurred hereunder or in connection with the creation or defense of this voting trust, shall be promptly paid by MoPac.

The Trustee may at any time or from time to time appoint an agent or agents and may delegate to such agent or agents the performance of any administrative duty of the Trustee.

The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof if such agent or attorney shall have been selected with reasonable care; nor shall the Trustee be answerable or liable for anything whatever in connection with the trust except for its negligence or wilful misconduct. MoPac agrees that it will at all times protect, indemnify and save harmless the Trustee from any loss, cost or expense of any kind or character whatsoever in connection with this trust except that, if any, growing out of the negligence or wilful misconduct of the Trustee; and MoPac will at all times itself undertake and assume full responsibility for and pay all cost and expense of any suit or litigation of any character, including any proceedings before the Interstate Commerce Commission, with respect to said securities of C&EI or this Trust Agreement; and if the Trustee shall become a party thereto MoPac will pay all costs and expenses, including counsel fees, to which the Trustee may be subjected by reason thereof.

The Trustee may consult with counsel and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or omitted or suffered by the Trustee hereunder in good faith and in accordance with such opinion. The Trustee, in its individual or any other capacity, may become the owner or pledgee of any class of stock or of any bonds, debentures or other securities of C&EI, and may engage in any and all banking activities with or for C&EI with the same rights it would have if it were not the Trustee hereunder.

The Trustee, or any trustee hereafter appointed, may at any time resign by giving written notice of resignation to MoPac. Upon receiving such notice of resignation MoPac shall promptly appoint a successor trustee which shall be a corporation organized and doing business under the laws of the United States or of any state thereof authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $10,000,000, and subject to supervision or examination by Federal or State authority. If no successor trustee shall have been appointed and shall have accepted appointment within 30 days after such notice of resignation, the resigning Trustee may petition any authority or court of competent jurisdiction for the appointment of a successor trustee.

(8) This trust is accepted by the Trustee subject to the right hereby reserved in MoPac at any time to sell or make other disposition of the whole or any part of any deposited securities of C&EI to anyone other than an affiliate of MoPac, ascribing to the term "affiliate" the meaning specified in Section 5(6) of the Interstate Commerce Act. The Trustee will at any time upon the receipt of direction from MoPac, signed by its President or one of its Vice Presidents and under its corporate seal, stating the person or corporation to whom it has sold or otherwise disposed of the whole or any part of the aforesaid securities of C&EI and that such person or corporation is not an affiliate of MoPac and has full power and authority to acquire the same (upon which statement the Trustee shall be entitled to rely), immediately transfer to the person or corporation therein named all of the Trustee's right, title and interest in such amount of said securities as may be set forth in said direction. If said direction shall specify all of the aforesaid securities then remaining subject hereto, then upon transfer of the Trustee's right, title, and in-

terest therein, and upon payment to the MoPac of the proceeds of sale as hereinafter in this paragraph provided, this trust shall cease and come to an end; and if said direction is as to only a part of the deposited securities, then this trust shall cease as to said part but shall remain in full force and effect as to the remaining part of said securities.

The Trustee shall promptly pay to MoPac the net proceeds of any sales of C&EI securities made by MoPac.

(9) MoPac has applied to the Interstate Commerce Commission for authority under Section 5(2) of the Interstate Act to acquire control of the C&EI and said Application is now pending in Finance Docket No. 21755. MoPac will promptly advise the Trustee of any interventions or representations in said proceeding affecting or related to this Trust Agreement, and of the making by the Interstate Commerce Commission of any final order in said proceeding.

If and when MoPac shall be authorized by order of the Interstate Commerce Commission to acquire control of C&EI, or to purchase the properties, or any part thereof, of C&EI, or to cause C&EI or its properties, or any part thereof, to be leased, consolidated, merged or otherwise to become a part of the system of MoPac, either directly or indirectly, or if and when the Interstate Commerce Commission shall approve or authorize a release of the securities held hereunder for any reason whatsoever, then immediately upon the delivery of a certified copy of the order of approval or authorization of the Interstate Commerce Commission, and an opinion of counsel that such order is final and effective, the Trustee shall transfer to MoPac its right, title and interest in and to all of the deposited securities of C&EI, or as to such part thereof as shall have been deposited with it to be held by it in accordance

with the terms, conditions, and agreements of this instrument and not transferred by it as elsewhere provided, and upon such transfer this trust shall cease and come to an end.

(10) Unless sooner terminated pursuant to any other provisions herein contained, this Trust Agreement shall terminate on April 20, 1972. All securities and other property held by the Trustee upon such termination shall be distributed to or upon the order of MoPac.

(11) The Trustee accepts the trust as in this Trust Agreement set forth and agrees to execute the trust upon the terms and conditions hereof.

(12) This Agreement may from time to time be modified or amended except that (a) no amendment or modification may be made which would affect the independence of the Trustee in the voting of, or exercising other rights in relation to, the deposited securities, or which would permit MoPac to terminate the trust or otherwise acquire record title or voting rights to any deposited securities other than as set forth in this Agreement, and, (b) any amendment or modification enlarging the duties or affecting the liabilities of the Trustee shall be approved by the Trustee. Any such modification or amendment shall be manifested by written instrument signed by MoPac and the Trustee and filed by MoPac with the Trustee and the Interstate Commerce Commission. Any such amendment shall be accompanied by the requisite authority of the Interstate Commerce Commission or an opinion of counsel that such authority is not necessary.

(13) The terms used in this Trust Agreement shall, as far as applicable, be given the definitions set forth in Part I of the Interstate Commerce Act.

(14) MoPac, by the execution of this Agreement, represents that it is a duly organized and existing corporation

in good standing under the laws of the State of Missouri; that it has full power and authority under the laws of the State of Missouri and the Company's Charter and By-Laws to execute and enter into this Agreement; and that the same has been duly authorized and no further approval or authority is necessary.

(15) This Trust Agreement is executed in triplicate, each of which shall constitute an original, and one of which shall be retained by MoPac, the second of which shall be held by the Trustee, and the third of which shall be lodged with C&EI by MoPac in order that it may be apprised of the rights and authority of the Trustee.

IN WITNESS WHEREOF, the MISSOURI PACIFIC RAILROAD COMPANY has caused this Trust Agreement to be executed by its President, and its corporate seal to be affixed, attested by its Secretary, and THE MARINE MIDLAND TRUST COMPANY OF NEW YORK has caused this Trust Agreement to be executed by its Vice President and its corporate seal to be affixed, attested by its Assistant Secretary the day and year first above written.

Missouri Pacific Railroad Company

By .....
President

Attested:

.....
Secretary

The Marine Midland Trust Company
of New York

By .....
Vice President

Attested:

.....
Assistant Secretary

APPENDIX C

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C. on the 23rd day of June, 1966.

Finance Docket No. 21755

MISSOURI PACIFIC RAILROAD COMPANY — CONTROL—CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY.

Finance Docket No. 21892

ILLINOIS CENTRAL RAILROAD COMPANY — CONTROL—CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

Finance Docket No. 21980

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

Upon consideration of the record in the above-entitled proceedings, the petition for leave to file a petition for reopening, further hearing and reconsideration filed by the St. Louis Southwestern Railway Company on May 4, 1966, together with a petition for reopening, further hearing and reconsideration proffered the same date with respect to the Commission's report and order of February 16, 1965, and its order of August 6, 1965, and to the replies to said petitions filed by Leon Leighton and jointly by the Louisville and Nashville Railroad Company and the Missouri Pacific Railroad Company; and

It appearing, That, insofar as the petitioner cites the application to purchase the properties of the Alton & South-

ern Railroad Company filed by the Missouri Pacific Railroad Company, in opposition to the petitioner's application for the same authority, as grounds for the relief sought in the proffered petition—the effect upon petitioner of such acquisition by Missouri Pacific can be determined in the consolidated proceeding upon both applications required by the Commission's order of May 31, 1966, in Finance Dockets Nos. 23935, 24075, and 24148; and that insofar as the petitioner relies on the improved financial condition of the Chicago & Eastern Illinois Railroad Company since the report and order of February 16, 1965—the petitioner filed no exception to the hearing examiner's report in these proceedings—if any change in general economic conditions, the financial condition of particular carriers, or the stock market would require reopening of proceedings such as this, it is unlikely that any proceeding involving a significant proposal for railroad unification would ever be completed, *I. C. C.* v. *Jersey City*, 322 U.S. 503 (1944)—and the alleged recent short-term improvement in the financial condition of the Chicago & Eastern Illinois Railroad Company is insufficient to warrant reconsideration of the Commission's conclusion, based on the long-term history of the carrier, that its affiliation with a stronger railroad will be consistent with the public interest.

It further appearing, That sufficient cause has been shown for filing the petition for reopening, further hearing and reconsideration but that the relief sought in said petition is not warranted on the basis of the circumstances alleged in support thereof; cf. *Pennsylvania R. Co.—Merger—New York Central R. Co.*, 327 I.C.C. 486:

It is ordered, That the petition for reopening, further hearing and reconsideration be, and it is hereby, filed; and that said petition be, and it is hereby, denied.

By the Commission.

H. Neil Garson,
Secretary.

(SEAL)

Service date.—June 29, 1966.

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